

General Information Letter: Checks not payable to the Department and not equal to the amount of money owed must be returned to the taxpayer within 15 days of receipt.

October 24, 2000

Dear:

This will serve as a reply to your correspondence dated October 4, 2000. According to Department of Revenue ("Department") regulations, the Department may issue only two types of letter rulings: Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). The regulations explaining these two types of rulings issued by the Department can be found at 2 Ill. Adm. Code sec. 1200 or on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

Due to the nature of your inquiry and the information presented in your letter, we are required to respond with a GIL. GILs are designed to provide background information on specific topics but are not, however, binding on the Department. In your letter, you have stated in relevant part as follows:

I am writing again in reference to tax year 1995. It has come to my understanding that I will not be receiving my refund of \$400.00 because the Illinois Department of Revenue finds it unclear as to whom this check was made out to. This money was not owed to the Illinois Department of Revenue begin with. A refund should have been sent or a letter of correspondence should have been sent when they received this money. This check was initially to go to the Internal Revenue Service and never reached there because it was sent in an envelope addressed to the State of Illinois. Because of my error, this has cost me penalties from the IRS and \$400.00 which you are stating I will never see. I would like to know if there is a record of me actually owing this money, because I don't show this. I am a very honest and hard-working person who has always believed in the government. I just can not believe that the people I trust in our system would steal this money from me. That is how I feel about this. I feel as if I have been cheated and stolen from. Both correspondences that I have received back from Ms. Betty Wankel, show no apparent consideration on her behalf. The letter dated July 17, 2000, does not even have my name or my town spelled correctly. I believe my letters and concerns have not been addressed properly and would appreciate someone spending some time with my request. This is my money and this was my error, but I feel there must be some way of correcting this.

Your correspondence contained no attachments, such as copies of the cancelled check or of notices issued by the Department, etc., so we can only respond to the information contained in your letter at this point. First, please be advised that the Department is sympathetic to your position. It is the legal obligation of the Department, as well as its policy, to collect only the amount of tax from the public which is correctly due and owing. The system is not perfect however, as you well know. In some instances, taxpayers seek to avoid their legal obligations, thereby increasing the burden on the rest of us. In other cases, honest mistakes are made, as appears to be the case here. From the information provided, it seems that you mailed a check relating to taxable year 1995 to the Department by mistake instead of to your intended recipient, the IRS.

Your letter states in part that "a letter of correspondence should have been sent when ...[the Department]... received this money." However, your letter does not state when the check was mailed or what type of payment this check represented, e.g., was it an estimated tax payment or payment of tax accompanying an annual personal income tax return, etc.? Without knowing the circumstances, we can only say that the Department does not usually issue receipts for payments it receives. Due to the enormous volume involved annually, I am certain you can understand the reasons why.

Most importantly for these purposes, your letter does not tell us to whom the check was made payable. You should know that since 1989, there has been in effect a law to protect taxpayers in situations such as this. Illinois Income Tax Act ("IITA")section 604, 35 ILCS 5/6-604 reads as follows:

Sec. 604 Payments Not Payable To Department

Any payment to the Department which is made by a check or money order not payable to the Department shall, within 15 days of receipt thereof, be returned by the Department to the taxpayer who submitted such check or money order or, if the payment is equal to the amount of money owed to the State of Illinois, the Department may deposit such check.

If your check, albeit erroneously directed to the Department, was made out to the IRS, it should have been returned to you within 15 days of its receipt by the Department under IITA sec. 604.

In the usual instance, checks sent to the Department are made payable to the Department. Those payments are, to the extent possible based upon identifying information, posted to the account of the payor for offset against tax liability. In order for a taxpayer to recover an overpayment of their account for a given tax year, a taxpayer must follow the claim for refund procedures set forth in Article 9 of the IITA (copy enclosed). This involves filing the appropriate return before the statute of limitations expires for that tax year. That period normally expires not later than 3 years later after the date the return was filed or one year after the date the tax was paid, whichever is later. IITA sec. 911(a)(1). Assuming for example, that a payment of income tax for taxable year 1995 was made as late as 12/31/96 and an individual return (Il-1040) was filed on 4/15/96, the normal statute of limitations for claiming a refund for that year would expire on the later of 12/31/97 or 4/15/99. As mentioned above, your letter does not contain sufficient facts for us to comment intelligently regarding specific dates. However, it could be that Ms. Wankel's correspondence to you are simply recognizing the bar imposed by the statute of limitations which would prevent the Department from issuing a refund based upon a tardy claim to any taxpayer, not just yourself, in similar circumstances.

The issue you raise is one of fact rather than of law: To whom was the check in question made out? This office does not have those facts, nor are we able to access a particular account to make inquiries and adjustments. We are therefore referring your correspondence to the Mr. Danny Young, Manager of the Department's Problems Resolution Bureau, whose area exists to help taxpayers in just this type of situation. His number is (217) 785-7313. As part of our referral, we will direct them to ascertain whether the check you wrote was made out to the Department or the IRS and, if the latter, to adjust your account by returning your erroneously mailed payment of \$400.00. Please do not hesitate to contact Mr. Young or myself if you have any further questions. Finally, please rest assured that the Department is concerned about this matter and will make every effort to assist you, even if our ultimate response may not be in your favor.

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Sincerely yours,

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